

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4539 of 2006()

AGAINST THE ORDER DATED 07/12/2006 IN CMP 2403 2006 IN
CC.1148/2003 of
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REVN. PETITIONER: PETITIONERS/ACCUSED

1. SOMAN, S/O. AYYAPPAN,
KAVUMKAL PUTHENPURA HOUSE,
ELAMBRA KARA, ERAMALLOOR VILLAGE,
KOTHAMANGALAM.
2. SATHYAN, S/O. AYYAPPAN,
KAVUMKAL PUTHENPURA HOUSE,
ELAMBRA KARA, ERAMALLOOR VILLAGE, KOTHAMANGALAM.
3. SIVASANKARAN, S/O. AYYAPPAN,
KAVUMKAL PUTHENPURA HOUSE, ELAMBRA KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM.

BY ADV. SRI.P.V.ELIAS
SRI.M.MURALI MANOHAR

RESPONDENTS: RESPONDENTS

1. MARIYAKUTTY, W/O. VARGHESE,
PUTHENPARAMBIL HOUSE, ELAMBRA KARA,
THRIKKARIYLOOR VILLAGE, KOTHAMANGALAM.
2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 20/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.HEMA, J.

CRL.R.P.NO.4539 of 2006

Dated this the 20th day of December, 2006

O R D E R

This revision petition arises from an order passed under Section 245(1) of the Code of Criminal Procedure ('the Code', for short). Petitioners are accused, against whom a private complaint was filed for offence under Section 324 read with Section 34 of the Indian Penal Code. After taking sworn statement of the complainant and the witnesses, summons was issued under Section 204 of the Code. Thereafter the complainant was examined under Section 244 of the Code. Exhibit P1 was also marked. On consideration of the evidence adduced, the trial court found that there are materials to frame charge against the accused. Accordingly, charge was framed against accused 1 to 3 for the offences under Sections 324 read with Section 34 IPC. Being aggrieved by this, this revision petition is filed.

2. Learned counsel for petitioner submitted that though PW1 stated in evidence that the details regarding the overt act committed by the accused, the court below ought not to have proceeded on the evidence PW1 since he is not an eye witness to the occurrence. This fact will be revealed from the complaint, Exhibit

P1, it is submitted. But the fact that PW1 is not an eye witness has not been brought out from the evidence of PW1. PW1 was available for cross-examination. But this fact has not been disclosed from her evidence. Only because in the complaint she is not referred to as an eye witness, it cannot be said that her evidence stands discredited. On going through Section 245 of the Code, it can be seen that if, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

3. On a reading of the evidence of PW1, it cannot be said that she is not an eye witness to the occurrence. Whether she was an eye witness or not is a fact which is to be brought out by the accused in evidence while she was offered for cross-examination. Since it is not done, at this stage, it cannot be said that the grounds under Section 245 of the Code are made out for discharging the accused. I do not find any illegality or impropriety to interfere in the order passed. This petition is only to be dismissed. However, it is made clear that at the appropriate stage the trial court will look into

whether PW1 is an eye witness or not and whether her evidence is only a hearsay evidence etc.

Petition is dismissed.

K.HEMA, JUDGE

vgs.